

EN BANC

[G.R. Nos. 140873-77, February 06, 2004]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. LEVI SUMARAGO,
APPELLANT.**

DECISION

CALLEJO, SR., J.:

The Spouses Vivencio and Teodora Brigole had four children. Two of them were girls – Norelyn, who was born on December 24, 1984,^[1] and her older sister Doneza, who was born in 1983. However, Teodora left Vivencio and kept custody of their children.

In 1991, Teodora and the appellant, Levi Sumarago, an eighteen-year-old mestizo *Subanen*, started living together as husband and wife. They had two children, Maricel and Levi Sumarago, Jr. Teodora and Levi often quarreled because of their myriad problems. In 1993, then thirteen-year-old Doneza went to Malaysia for employment.

In the morning of March 5, 1995, Norelyn, who was then barely ten years old, was gathering firewood with the appellant in the latter's farmland. While they were nearing a guava tree, the appellant suddenly boxed her on the stomach. Norelyn lost consciousness. She had her clothes when she woke up. It was about noon. She had a terrible headache and felt pain in her vagina. She also had a bruise in the middle portion of her right leg. The appellant warned her not to tell her mother about it, otherwise he would kill her.

On March 13, 1995, Norelyn and the appellant were again gathering firewood. The appellant ordered her to follow him to the banana plantation owned by Mejorcada in *Barangay* Manlin, Buug, Zamboanga del Sur. He walked ahead, while Norelyn followed. She then lost sight of the appellant. As she passed by the banana plantation, the appellant suddenly appeared and grabbed her. He then forced her to lie down. He removed her panties and when she tried to shout, he covered her mouth with his hand. He mounted her and inserted his penis into her vagina. Norelyn felt excruciating pain. After he was satiated, the appellant stood up and ordered her to put on her panties. He warned her "Don't you ever tell, I will surely kill you."

On March 24, 1995, Norelyn and the appellant were scheduled to gather firewood in the farmland owned by Mejorcada. Norelyn did not want to go, but she could not refuse as the appellant would get mad at her. She sat by a guava tree and waited for the appellant. When he arrived, he told her to come near him. Norelyn refused. The appellant then held her hand and brought her to an area hidden by bushes. He took off Norelyn's panties and undressed himself. He went on top of her and inserted his penis into her vagina. Norelyn could not move as the appellant

pinned her legs with his own. She tried to shout but the appellant's hand was on her mouth. After he was done with her, he ordered her to put on her clothes. He then dressed himself and told her that they were going home. Norelyn did not tell her mother about the incident for fear that the appellant would kill them both.

On April 2, 1995, Norelyn and the appellant gathered firewood anew in the same farmland. She waited for the appellant before leaving for home. The appellant arrived. He undressed Norelyn and forced her to lie down and mounted her. She tried to shout but he covered her mouth with his hand. He then inserted his penis into her vagina. After he was satiated, he ordered her to put her clothes on and to stand up.

On April 11, 1995, the appellant told Norelyn that they were going to *Barangay* Lantawan where Subanen tribes resided to gather firewood. She told the appellant that she could not go with him because she had some chores to do in the house. The appellant insisted and told her to let her mother do the chores. After gathering firewood, the appellant told her that they would get some abaca with which to tie the wood. However, when they were near tall grasses, he pulled her down and took off all her clothes. After undressing himself, the appellant mounted her and inserted his penis into her vagina. Norelyn tried in vain to shout, but she could not as the appellant's hand covered her mouth. Afterwards, he ordered her to put on her clothes.

Later, Norelyn told her sister Doneza that the appellant had raped her.

On August 24, 1996, Sopiana Maque, Teodora's mother and Norelyn's grandmother, was in Zamboanga City visiting her other daughter. Norelyn and Doneza stayed with their grandmother. Doneza asked Sopiana if she knew about what happened to Norelyn. When Sopiana replied in the negative, Doneza told her that the appellant had raped Norelyn. When Sopiana confronted Norelyn, the latter confirmed what Doneza said. Sopiana was shocked. She cried as she thought of her granddaughter's terrible ordeal.

On August 30, 1996, Sopiana and her granddaughters returned to Barangay Manlin. Sopiana told Teodora what Doneza and Norelyn had related to her. Teodora confronted Norelyn and the latter confirmed that the appellant had indeed raped her. She told her mother that she did not say anything earlier because she was afraid the appellant might kill her and their family.

The appellant was then in jail on a rape charge. Teodora visited him there and confronted him about the matter. At first, the appellant denied that he raped Norelyn. He later had a change of heart and admitted that he had indeed raped Norelyn. Teodora was infuriated.

On October 18, 1996, Teodora had Norelyn examined by Dr. Avenida Vista. The doctor's findings were as follows:

DIAGNOSIS/FINDINGS:

(-)-
MENARCHE
BREAST-SLIGHTLY

DEVELOPED
VULVA:

LABIA MINORA – NOT WELL DEVELOPED
LABIA MAJORA – NOT WELL DEVELOPED
- LACERATION INCOMPLETE AT
HYMEN – 3 O’CLOCK AND 9 O’CLOCK
POSITION
- NO ABRASION NOR HEMATOMA NOTED
(-) ABSENCE OF SPERMATOZOA^[2]

On October 29, 1996, Teodora and Norelyn filed a criminal complaint for rape against the appellant with the Municipal Trial Court of Buug, Zamboanga del Sur.^[3]

The appellant was charged with five counts of rape in five Informations filed with the Regional Trial Court of Zamboanga del Sur, Branch 20. The docket numbers and the accusatory portion of each Information read as follows:

CRIMINAL CASE NO. 2537

“That on or about April 11, 1995 at 8:30 o’clock on the morning more or less at Barangay Lantawan, Municipality of Buug, Province of Zamboanga del Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused by means of force and intimidation, did then and there willfully, unlawfully and feloniously succeed, in having carnal knowledge with one Norilyn (*sic*) Brigole a minor of (10) ten years old, against the latter’s will.

Act contrary to Article 335 of the Revised Penal Code.”

CRIMINAL CASE NO. 2538

“That on March 24, 1995 at noon more or less, at Barangay Manlin, Municipality of Buug, Province of Zamboanga del Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously succeed in having carnal knowledge with one Norilyn Brigole, a minor of 10 years old, against her will.

Act contrary to Article 335 of the Revised Penal Code.”

CRIMINAL CASE NO. 2539

“That on March 13, 1995 at 10:00 o’clock more or less in the morning at Barangay Manlin, Municipality of Buug, Province of Zamboanga del Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused by means of force and intimidation, did then and there willfully, unlawfully and feloniously succeed in having carnal knowledge with one Norilyn Brigole a minor of ten (10) years old against her will.

Act contrary to Article 335 of the Revised Penal Code.”

CRIMINAL CASE NO. 2540

"That on April 2, 1995 at Barangay Manlin, Municipality of Buug, Province of Zamboanga del Sur, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused by means of force and intimidation did then and there willfully, unlawfully and feloniously, have carnal knowledge with one Norilyn Brigole a minor of 10 years old, against her will.

Act contrary to Article 335 of the Revised Penal Code as amended by R.A. 7659."

CRIMINAL CASE NO. 2541

"That on March 5, 1995 at Barangay Manlin, Municipality of Buug, Province of Zamboanga del Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused by means of force and intimidation did then and there willfully, unlawfully and feloniously have carnal knowledge with one Norilyn Brigole a minor of ten (10) years old, against her will.

Act contrary to Article 335 of the Revised Penal Code as amended by R.A. 7659."

The Case for the Appellant

The appellant denied the charges. He testified that he was a fisherman, and on those dates when he allegedly raped Norelyn, he was out at sea fishing. From his house, it would take hours for one to get to Pamintayan where he used to fish for Rudy Gamar. He was not aware of any reason why Norelyn would charge him of rape. He had been very good to Norelyn. Teodora filed the complaints against him because according to her, the *Barangay* Captain threatened to send her to jail if she would not charge the appellant with rape.

After due trial, the court rendered judgment, the decretal portion of which reads:

Accordingly, judgment is hereby rendered finding the accused, LEVI SUMARAGO, GUILTY, as principal, of the crime of Rape in these Criminal Cases Nos. 2537, 2538, 2539, 2540, and 2541, and sentences him to the capital punishment of DEATH. He is further ordered to indemnify the victim Norelyn Brigole in the sum of Two Hundred Fifty Thousand Pesos.

Let the records of these cases, including the transcript of stenographic notes, and object evidence be forwarded to the Supreme Court within twenty days after promulgation or notice of denial of any motion for new trial or reconsideration, for its automatic review and judgment *en banc*.

SO ORDERED.^[4]

The appellant assails the decision of the trial court contending that:

I

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-

APPELLANT GUILTY BEYOND REASONABLE DOUBT OF CONSUMMATED
RAPE DESPITE THE UNCERTAINTY OF ITS COMMISSION.

II

THE COURT A QUO GRAVELY ERRED IN IMPOSING THE SUPREME
PENALTY OF DEATH DESPITE FAILURE OF THE PROSECUTION TO ALLEGE
THE RELATIONSHIP IN THE INFORMATION.^[5]

On the first assignment of error, the appellant avers that the prosecution failed to prove that he had carnal knowledge of Norelyn on March 5, 1995 because of the following: (1) Norelyn merely testified that the appellant boxed her and when she regained consciousness, felt pains in her vagina and saw that her right leg was bruised; (2) she was fully clothed when she awoke; and (3) she only believed that the appellant raped her because her vagina was painful.

As for the four other counts of rape, the appellant insists, Norelyn's account of the crimes charged are but mere general narrations, without specific details of the events as they transpired. Her testimony that the appellant raped her on March 13, 1995 is incredible because she admitted that the appellant had sex with her only for a short time. Considering that, at her tender age, her vagina had not yet developed, the appellant could not have inserted his penis only for a short time. Moreover, the doctor testified that she was unsure as to what had caused the hymenal laceration in Norelyn's vagina, and that it could have been caused by a finger or a stick.

We agree with the appellant that the prosecution failed to prove beyond reasonable doubt that the appellant had carnal knowledge of Norelyn on March 5, 1995.

For the accused to be held guilty of consummated rape, the prosecution must prove beyond reasonable doubt that: (1) there had been carnal knowledge of the victim by the accused; (2) the accused achieves the act through force or intimidation upon the victim because the latter is deprived of reason or otherwise unconscious.^[6] Carnal knowledge of the victim by the accused may be proved either by direct evidence or by circumstantial evidence that rape had been committed and that the accused is the perpetrator thereof. A finding of guilt of the accused for rape may be based solely on the victim's testimony if such testimony meets the test of credibility. Corroborating testimony frequently unavailable in rape cases is not indispensable to warrant a conviction of the accused for the crime.^[7] This Court has ruled that when a woman states that she has been raped, she says in effect all that would be necessary to show that rape did take place. However, the testimony of the victim must be scrutinized with extreme caution. The prosecution's evidence must stand or fall on its own merits.^[8]

In *People v. Campuhan*,^[9] we ruled that for the accused to be guilty of consummated rape, there must be sufficient and convincing proof that the penis, indeed, touched at least the labia majora or slid into the female organ and not merely stroked the external surface thereof. The Court further ruled that:

... Thus, **touching** when applied to rape cases does not simply mean mere epidermal contact, stroking or grazing of organs, a slight brush or a